



# County of Erie

MARK C. POLONCARZ  
COMPTROLLER

November 27, 2009

Hon. Christopher C. Collins  
Erie County Executive  
95 Franklin Street, 16<sup>th</sup> Floor  
Buffalo, New York 14202

Hon. Timothy B. Howard  
Erie County Sheriff  
10 Delaware Avenue  
Buffalo, New York 14202

**Re: City of Buffalo Cellblock Agreement – Renegotiation of Payment Amount**

Dear County Executive Collins and Sheriff Howard:

As you both are aware, in 2003, Erie County ("County") entered into an agreement with the City of Buffalo ("City") whereby the Sheriff's Department assumed the operation of the Buffalo Cellblock function in the Erie County Holding Center (the "Agreement"). As provided for in the Agreement, in return for providing cellblock detention services to the City, the City is required to pay the County \$936,794 annually, payable in equal quarterly installments of \$234,198.50, due on January 1, April 1, July 1 and October 1.<sup>1</sup>

The Agreement further provides that at the end of 2006, and every third year thereafter, the County and the City shall review the expenses and revenues associated with the Agreement and can negotiate an increase or decrease in the amount of the annual payment to take effect in the following July 1 quarterly payment.<sup>2</sup> Thus, under the terms of the Agreement, the County is provided an opportunity to renegotiate the terms of payment under the Agreement upon the expiration of this calendar year (2009).

According to the Agreement, any review to determine any adjustments in the annual payment by the City:

shall consider, among other factors, additional capital improvements made by the COUNTY to the Detention Facility, increases or decreases in personnel and operating costs of the Detention Facility, the number of Arrestees from the City and Other Arresting Agencies that are serviced by the Detention Facility and the fiscal impact of changes in laws and regulations relating to the operation of the Detention Facility.<sup>3</sup>

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<sup>1</sup> Agreement, § (5).

<sup>2</sup> Agreement, § (6)(A).

<sup>3</sup> *Id.*

As revealed in my office's January 2007 review of the implementation of the Agreement's terms, and as both of you are aware, the City has consistently violated the terms of the Agreement in making payments late. Additionally, we found that between September 1, 2003 and December 31, 2006, the County's cost to operate the cellblock exceeded the City's payments by \$1.66 million. We further calculated that without changes to the Agreement or management improvements to reduce the expense of the cellblock, the County's costs to operate the cellblock until the Agreement expires on June 30, 2013 could exceed the City's total aggregate payments by as little as \$5.59 million or as much as \$10.39 million. A copy of the review is enclosed herein for your review.

Despite our review and warning, the Giambra Administration and Sheriff Howard failed to renegotiate the Agreement and seek a significant increase in the City's payment to reflect the actual County cost of running the Cellblock.

The Agreement also provided for an automatic modest "escalation" payment process if the County and the City could not come to an agreement (or did not even try) concerning an increase. Under this process, the payment automatically follows the cumulative Buffalo Area Consumer Price Index for the previous three years, subject to a 7.5% cap.<sup>4</sup> Following our review and recommendation, starting in July 2007, the Sheriff began sending quarterly invoices to the City that included the quarterly escalation amount of \$17,564.89.

Starting in February 2009, and through October 2009, my staff was in contact with the Department of Law regarding the City's failure to timely make its required Cellblock payments. Our office learned in May 2009 that despite the Sheriff's quarterly invoicing of the City for escalation amounts, the City had not paid the quarterly escalation amount of \$17,564.89 for each quarter starting July 1, 2007 through April 1, 2009. The City continued to pay \$234,198.50 each quarter when it should have paid \$251,763.39. This led to an outstanding unpaid City escalation payment balance of \$140,519.12 for 2007 - 2009.

At the Department of Law's suggestion, my office sent several "dunning" letters to the City demanding payment and directing the City to change the quarterly payment to \$251,763.39. Eventually, in summer 2009 the City changed the quarterly payment and paid the past-due escalation amounts.

In addition, we were informed that in July/August 2009, the Department of Law apparently sent some form of communication to the City pertaining to the Agreement and operation of the cellblock. Despite our repeated requests to obtain a copy of that

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<sup>4</sup> Agreement, § (6)(C). The Buffalo Area Consumer Price Index is no longer published by the U.S. Department of Labor. Using the Consumer Price Index for Northeast Urban Consumers as a replacement, the index increased from 200.2 to 215.0 from 2004 to 2006, resulting in a 7.4% increase over three years (see U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index - All Urban Consumers Series ID CUUR0100SA0 Northeast Urban, Not Seasonally Adjusted).

**Poloncarz Letter to Collins and Howard on Cellblock**

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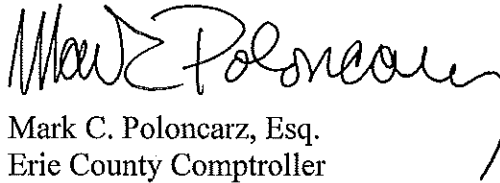
communication, the County Attorney has not provided our office with any data or responded to our inquiries.

Given the fiscal issues facing the County, particularly the looming budget gaps, it is very important that the Agreement be modified to require that the City pay for the County's actual cost for operating the cellblock. The service and function is clearly not budget-neutral for the County, and neither is it mandated.

In short, while I do not advocate the termination of the Agreement, I recommend that the Administration and Sheriff contact the City and renegotiate the Agreement by requiring the City to pay an amount equal to the actual cost of the County to operate the cellblock (which renegotiation is provided for by the terms of the Agreement).

As always, I and my staff are available to assist you in this matter. Please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark C. Poloncarz". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Mark C. Poloncarz, Esq.  
Erie County Comptroller

MCP/mk  
Encl.

cc: Erie County Legislature  
Erie County Fiscal Stability Authority  
Erie County Attorney Cheryl Green



# County of Erie

MARK C. POLONCARZ  
COMPTROLLER

January 26, 2007

Hon. Timothy B. Howard  
Erie County Sheriff  
10 Delaware Avenue  
Buffalo, New York 14202

Honorable Members  
Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

**Re: Review of City of Buffalo Cellblock Agreement with County of Erie**

Dear Sheriff Howard and Honorable Members:

The Erie County Comptroller's Office ("Office") has completed a review of the agreement between the City of Buffalo ("City") and Erie County ("County") dated July 1, 2003 (the "Agreement"), a copy of which is attached herewith as Exhibit "A," transferring the detention of pre-arraigned arrestees from the City to the County's Holding Center.

The objectives of our review were to determine: (1) whether the County has satisfied its responsibilities as outlined in the Agreement; (2) whether the City has satisfied its responsibilities as outlined in the Agreement; (3) the County's cost for maintaining the City cellblock detainee function; and (4) whether the County's costs exceed the City's annual payment.

## BACKGROUND

In 2001, County Executive Joel A. Giambra commenced discussions with City officials concerning the possibility of a countywide police agency. These discussions included whether the County might assume the City's responsibilities for booking and detaining pre-arraigned arrestees from the City at the County's Holding Center, thus enabling the City to close its aging cellblock facility at Buffalo Police Headquarters at 74 Franklin Street. The County already assumed responsibilities for the detention of female arrestees from the City several years earlier. These discussions also followed the January 2001 report of the Buffalo Niagara Partnership's "Who Does What?" Commission, which recommended that the City cellblock be closed and the County assume those detention responsibilities.

The premise behind these discussions was that the City's cellblock was duplicative of the County's Holding Center, that the cellblock was aging and in need of significant capital infrastructure improvements that the City could not easily afford, that the County's daily cost per prisoner was significantly lower than the City's, and that the County's assumption of detention

and booking responsibilities could save the City hundreds of thousands of dollars annually while the County's costs would be covered by a City annual payment.

With the support of the Erie County Sheriff and Buffalo Police Commissioner, and following the approvals of the County Executive, Buffalo Mayor, Buffalo Common Council, and the Erie County Legislature (Comm. 11E-44, approved June 19, 2003), the City and Erie County entered into the Agreement whereby the City closed the cellblock and transferred all detention and booking functions to the responsibility of the Erie County Sheriff's Office and the Erie County Holding Center. The Buffalo cellblock closed on Sunday, August 31, 2003.

#### **GENERAL TERMS AND CONDITIONS OF THE AGREEMENT**

Under the Agreement (enclosed), the County agreed to:<sup>1</sup>

- Provide certain booking functions such as fingerprinting and mug shots;
- Provide secure detention facilities, including guards;
- Receive arrestees from the City;
- Secure the detention of arrestees until their arraignment;
- Provide transportation of arrestees from the detention facility to the respective courts;
- Secure the arrestees in the courts throughout the arraignment process;
- Attend to the basic medical needs of the arrestees after they have been accepted into the Sheriff's custody;
- Permit the City (or other arresting agencies) to access the detention facility for investigative or other purposes; and
- Provide for the release of arrestees into the custody of the City or other arresting agencies.

The Agreement also specifies that "Detention Services do NOT include the transportation of Arrestees between the CITY's facilities and the Detention Facility, the creation of arrest or other reports, or the interrogation, investigation or prosecution of the Arrestee."<sup>2</sup>

The Agreement states that the City shall provide necessary medical attention to the Arrestee and if necessary, transport the Arrestee to and from appropriate hospitals, if one or more of the following conditions exist:

- The Arrestee is sick, ill or injured;
- The Arrestee is mentally ill;
- The Arrestee's ability is impaired by alcohol or drugs to the extent that he is unconscious or semi-conscious or he poses a danger to himself or others; or
- The Arrestee ingested or is suspected of having ingested any foreign object or substance.<sup>3</sup>

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<sup>1</sup> Agreement, § (2)(A).

<sup>2</sup> Agreement, § (2)(B).

<sup>3</sup> Agreement, § (3)(A).

The Sheriff's Office also reserves the "right to refuse to perform Detention Services for any Arrestee if the Sheriff, in its sole discretion, determines that one or more of the above-referenced conditions has not been alleviated upon the Sheriff's receipt of the Arrestee from the CITY."<sup>4</sup>

Under the Agreement, the City's uniformed cellblock attendants and senior cellblock attendants were eligible to transfer to County employment as Sheriff Deputy-Officers in the Holding Center. The Legislature's approval of the Agreement (Comm. 11E-44) authorized the Sheriff to create eighteen (18) new Sheriff Deputy-Officer positions for the Buffalo Lock-Up Security cost center to facilitate these transfers. We note that eleven (11) Buffalo personnel transferred to the County, and that for the period December 24, 2005 to December 22, 2006, twenty (20) Deputy Sheriff-Officer positions and one (1) Report Technician (Sheriff) 55A position were filled in the Buffalo Lock-Up Security cost center.

In return for providing detention services to the City, the City is required to pay the County \$936,794 annually, payable in equal quarterly installments of \$234,198.50, due on January 1, April 1, July 1 and October 1 of each calendar year.<sup>5</sup> As stated in the Agreement:

Should the CITY fail to make one or more Quarterly Payments to the COUNTY, the County may, at its sole discretion, terminate this Agreement pursuant to the terms contained herein. Upon termination, the CITY shall be solely responsible for obtaining Detention Services elsewhere.<sup>6</sup>

Though the above section seems to grant the County the right to immediately terminate the Agreement upon the City's failure to pay, the Agreement does provide that upon the default of any party, the non-defaulting party (the County) may provide the defaulting party (the City) with a written notice of default, and if the City does not cure the default within thirty (30) days of their receipt of said notice, the County may terminate the Agreement upon an additional thirty (30) days written notice to the City.<sup>7</sup>

Nothing in the Agreement requires the County to invoice the City for these payments, nor should there be an invoice required as these are installment payments due on a certain date pursuant to the terms of the Agreement. Notwithstanding the forgoing, the County has sent invoices to the City as a convenience to remind the City of the payments.

Please be advised that as of January 26, 2007, the City has not made either its October 1, 2006, nor its January 1, 2007 payments to the County, but has pledged to do so following a written request from this Office dated January 8, 2007. Despite frequent late quarterly payments

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<sup>4</sup> Agreement, § (3)(B).

<sup>5</sup> Agreement, § (5).

<sup>6</sup> Agreement, § (8).

<sup>7</sup> Agreement, § (1)(B).

by the City, it is our understanding that neither the County Executive, Sheriff, nor County Attorney have served any notice of default on the City.

#### **TERM OF AGREEMENT**

The agreement is for an initial five (5) year term, expiring June 30, 2008, and shall automatically renew for four (4) additional five (5) year terms, unless either party provides two (2) year's written notice of non-renewal to the other.<sup>8</sup> In other words, because neither party provided the other a notice of non-renewal by June 30, 2006, it could be argued that the Agreement has been renewed for at least one (1) additional term. If it has been extended, then the Agreement will remain in effect until June 13, 2013.

#### **RENEGOTIATION OF PAYMENTS**

At the end of 2006, and every third year thereafter, the County and the City shall review the expenses and revenues associated with the Agreement and can negotiate an increase or decrease in the amount of the annual payment to take effect in the following July 1 quarterly payment.<sup>9</sup>

According to the Agreement, any review to determine any adjustments in the annual payment by the City:

shall consider, among other factors, additional capital improvements made by the COUNTY to the Detention Facility, increases or decreases in personnel and operating costs of the Detention Facility, the number of Arrestees from the City and Other Arresting Agencies that are serviced by the Detention Facility and the fiscal impact of changes in laws and regulations relating to the operation of the Detention Facility.<sup>10</sup>

If the County and the City do not come to an agreement concerning an increase, the payment automatically follows the cumulative Buffalo Area Consumer Price Index for the previous three years, subject to a 7.5% cap.<sup>11</sup> As per the Agreement, any change in the amount of the quarterly payments will not take effect until the July 1, 2007 payment.

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<sup>8</sup> Agreement, § (1)(A).

<sup>9</sup> Agreement, § (6)(A).

<sup>10</sup> *Id.*

<sup>11</sup> Agreement, § (6)(C). The Buffalo Area Consumer Price Index is no longer published by the U.S. Department of Labor. Using the Consumer Price Index for Northeast Urban Consumers as a replacement, the index increased from 200.2 to 215.0 from 2004 to 2006, resulting in a 7.4% increase over three years (see U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index - All Urban Consumers Series ID CUUR0100SA0 Northeast Urban, Not Seasonally Adjusted).

It is our Office's understanding that since the end of 2006 the County and City have not reviewed the expenses and revenues associated with the Agreement or negotiated an increase or decrease in the amount of the annual payment.

#### **COUNTY AND CITY PERFORMANCE OF TASKS**

This Office's recent audit of operations at the County Holding Center finds that the Sheriff's Office was performing the tasks as listed in the Agreement in an acceptable fashion. We are also unaware of any City concerns or allegations of any County violation of the Agreement.

#### **ACTUAL COUNTY COSTS – 2003-2006**

As previously noted, our Office recently completed an audit of operations at the County's Holding Center. The audit reviewed, among other issues, the County's costs to operate the facility, including personnel expense. While not specifically mentioned in the audit, our Office reviewed costs for the Buffalo Lock-Up Security cost center. Table 1 below describes the County's costs for the past forty (40) months:



Table 1:

### Buffalo Lock-Up Cost Center Cost Schedule

	<u>2003<sup>1</sup></u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Deputy (job group 8, step 2)	\$40,315	\$42,372	\$44,441	\$46,494
Overtime shift, etc.	4,838	10,477	12,557	13,749 <sup>(4)</sup>
Lineup pay	<u>0</u>	<u>978</u>	<u>1,652</u>	<u>1,717</u> <sup>(4)</sup>
Subtotal - Personnel Costs	\$45,153	\$53,827	\$58,650	\$61,960
Fringes <sup>2</sup>	\$13,546	\$20,993	\$29,325	\$30,980
Uniform Allowance	<u>1,000</u>	<u>750</u>	<u>750</u>	<u>750</u>
Total Deputy Cost	\$59,699	\$75,570	\$88,725	\$93,690
Total # of Deputy Positions	18	19	18	20
Total Cost of Positions	\$1,074,582	\$1,435,830	\$1,597,050	\$1,873,800
Ancillary Costs <sup>3</sup>	21,895	22,442	22,990	23,537
Total County Costs	\$1,096,477	\$1,458,272	\$1,620,040	\$1,897,337
Reimbursement from Others <sup>3</sup>	159,681	163,673	167,665	171,657
Net Cost to the County	\$936,796	\$1,294,599	\$1,452,375	\$1,725,680
Current Reimbursement from the City		<u>936,796</u>	<u>936,796</u>	<u>936,796</u>
Net Loss to County (Annually)		\$357,803	\$515,579	\$788,884
<b>TOTAL LOSS TO COUNTY ( 3 YEAR PERIOD)</b>				<u>\$1,662,266</u>

(1) 2003 figures are from a spreadsheet prepared by Division of Budget, Management and Finance

(2) Fringes - 30% in 2003; 39% in 2004; 50% in 2005 and 2006

(3) Figures increased 2.5% each year from the original 2003 figure

(4) Overtime and Lineup costs are actual figures from SAP for the Buffalo Lockup Security Cost Center divided by the number of guards assigned.

This review finds that the County's costs under the Agreement exceeded the City's payments by \$1,662,266 during the first forty (40) months of the Agreement (September 1, 2003 - December 31, 2006).

### **POTENTIAL FUTURE LOSSES – 2007-2013**

Given the above-mentioned County losses to date, this Office calculated the potential losses to the County for the Buffalo Lockup Security function through June 30, 2013, absent any change in the current City payment. We used two methods to calculate potential future losses in this area. Under the first method, we used the current annual rate of inflation. Under the second method, we used average actual losses.

Using the inflation calculation, we took the Consumer Price Index for Northeast Urban consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics and determined that over the past three years, it increased on average about 2.3% per year. Using the County's 2006 loss of \$788,884, we multiplied that loss by 2.3% each year for the remaining six and one half years of the contract (the last year of the contract would have only two payments). Under that calculation, we have determined that the County would lose \$5,591,783 between 2007 and 2013 (see Exhibit "B," attached herewith).

Using the average actual losses for 2003-2006, we determined that the County's costs exceeded the City's reimbursement by more than \$157,000 between 2004 and 2005, and by more than \$273,000 between 2005 and 2006. The average of these two figures is \$215,000 (rounded). Accordingly, if the County's costs above the City's current payment continue to increase by \$215,000 annually to 2013, the County's total loss over those six and one half years would be \$10,395,246 (see Exhibit "C," attached herewith).

At this rate, absent any renegotiation of the payments, we believe that the County can expect to lose an additional \$5,591,783 million by June 30, 2013 and potentially as much as \$10,395,246.

Our review demonstrates that the County's operation of the Buffalo Lock-Up Security cost center and provision of ancillary functions for the City has significantly negatively impacted the County's General Fund. The City's payments to the County – which are routinely late, a violation of the terms of the Agreement and grounds for termination if the County is so inclined – are outpaced by the costs of the Buffalo Lock-Up Security function.

**WE RECOMMEND** that the appropriate County officials, including the Sheriff and Director of Budget, Management and Finance, review our findings to confirm the County's actual costs and establish the County's "official" escalation adjustment for the Buffalo Lock-Up Security function in the Holding Center.

**WE FURTHER RECOMMEND** that under the terms of the Agreement, the County should immediately commence negotiations with the City to increase the City's payment under this Agreement to fully reimburse the County for its annual cost of services provided under the Agreement. The County's costs have increased significantly since the Agreement was signed in July 2003 and such costs must be passed on to the City.

We note that some question exists as to whom should perform the negotiation on behalf of the County. The original Agreement was negotiated by the County Executive's Office. When this Office inquired, the Erie County Law Department stated their belief that the Erie County Sheriff's Office should initiate negotiations with the City. To the contrary, the Sheriff's Office stated their belief that the Law Department should or would engage in negotiations. Because the Sheriff's Office is governed by an independently elected official, **WE RECOMMEND** that the Sheriff immediately begin such negotiations with the City and notify the County Executive's Office on the status of negotiations.

**WE ALSO RECOMMEND** that should the City desire to fall back on the 7.5% cumulative CPI increase cap, the County should take a hard stance and inform the City that the contract will terminate on June 30, 2013, unless the City agrees to a more realistic increase commensurate with the County's actual costs.

My office is available to assist the Sheriff's Office, Department of Law, and Division of Budget, Management and Finance and to answer any questions you have in this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark C. Poloncarz", with a large, stylized flourish at the end.

Mark C. Poloncarz, Esq.  
Erie County Comptroller

cc: Hon. Joel A. Giambra, Erie County Executive  
Hon. Byron W. Brown, Mayor, City of Buffalo  
Hon. Andrew A. SanFilippo, Comptroller, City of Buffalo  
Mr. James M. Hartman, Director, Div. of Budget, Management and Finance  
Mr. Laurence K. Rubin, Esq., County Attorney  
Erie County Fiscal Stability Authority